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IN THE

Supreme Court of the United States

OCTOBER TERM, 1994

CHANDRIS, INC., CHANDRIS, S.A. and
FOURTH TRANSOCEANIC SHIPPING CO., LTD.,
Petitioners,

vs.

ANTONIOS LATSIS,
Respondent.

On Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

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AMICUS CURIAE BRIEF OF THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF THE RESPONDENT

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BRIEF OF AMICUS CURIAE THE ASSOCIATION OF TRIAL LAWYERS OF AMERICA IN SUPPORT OF RESPONDENT

IDENTITY AND INTEREST OF *AMICUS CURIAE*

The Association of Trial Lawyers of America ["ATLA"] is a voluntary national bar association whose 50,000 members primarily represent injured persons, including those injured in maritime activities. All parties to this action have consented in writing to the submission of this brief, and the appropriate letters of consent have been filed with this Court.

In *McDermott International, Inc. v. Wilander*, 498 U.S. 337 (1991), this Court specifically addressed the issue of seaman's status under the Jones Act. The Court held that a maritime worker need not be engaged in the actual navigation of a vessel to be a seaman for purposes of the Jones Act. The exact contours of the maritime worker's employment-related connexity to a vessel or fleet of vessels was not before the Court in *Wilander*. As the Court pointed out, "We are not called upon here to define [employment-related] connection in all details, but we hold that a necessary element of the connection is that a seaman perform the work of a vessel." 498 U.S. at 355. This aspect of Jones Act status has been treated differently and often inconsistently by the Courts of Appeals. As one commentator states, concerning the Fifth Circuit's test for seaman's status in *Barrett v. Chevron, U.S.A., Inc.*, 781 F.2d 1067 (5th Cir. 1986) (en banc), it "has proven to be clumsy, imprecise, and subject to considerable judicial gymnastics. Jack L. Allbritton, *Seaman Status in* Wilander's *Wake*," 68 Tul. L. Rev. 373, 388 n.110 (1994).

The semantic nature of such judicial gymnastics is readily manifest in the briefs that have been filed with the Court in this case. In the amicus curiae brief filed on behalf of TECO Transport & Trade Corporation and other industries, for example, the author takes the Second Circuit's test for seaman's status to task because it is based, in part, on the precept that seaman's status requires a "more or less permanent connection with a vessel." At the same time, the author advocates the Fifth Circuit's test, which, in part, requires that the would-be seaman perform a substantial part of his work on the vessel. While neither test requires permanent assignment to a vessel, the degree to which a "more or less permanent" connection to a vessel differs from a "substantial" connection to a vessel has led to different tests for seaman's status being promulgated by the Courts of Appeals. As a result, whether a maritime worker is deemed a seaman may well depend upon the Circuit in which his action

is filed. Justice, as a consequence, results not from evenhandedness but from geographic fortuity. Because the Second Circuit in *Latsis* provides guidance to resolve this aspect of the seaman's status question, by directing lower courts to assess the duration as well as the nature of the maritime worker's employment-related connection to a vessel, the *Latsis* court's test resolves much of the existing confusion attending the issue of seaman's status.

Accordingly, the Association of Trial Lawyers of America, as amicus curiae, supports the position of respondent in this lawsuit and urges that the decision rendered by the Court of Appeals for the Second Circuit be affirmed.[1]

SUMMARY OF THE ARGUMENT

At issue before the Court is the efficacy of its directive in *Wilander*--that a Jones Act seaman is a maritime worker who owes his "allegiance to a vessel and not *solely* to a land-based employer." 498 U.S. at 347 (emphasis added). In *Wilander*, the Court acknowledged that any inquiry into seaman's status is of necessity "fact specific" and requires attention to "the activity in which [the maritime worker] was engaged at the time of the injury" as well as "the employee's precise relationship" to the vessel. 498 U.S. at 356. No question exists but that Latsis, the respondent, was a member of the crew of the S.S. GALILEO at the time of his injury and was deemed to be such by his employer.[2]

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[1] ATLA adopts the Statement of the Case and Legal Argument set forth in Respondent's brief.

[2] In fact, the district court judge instructed the jury, via the parties' stipulation, that Latsis's work "was a contribution to the functioning of the vessel and assisted in the accomplishment of its various missions." J.A. 211.

In *Wilander*, the Court held that a worker who was assigned to a vessel for the duration of that vessel's voyage and whose work assignments contributed to the vessel's mission satisfied the requirements for status under the Jones Act. In *Latsis*, a member of a vessel's crew was injured by a recognized peril of the sea while contributing to the function of the vessel during its voyage. In ruling, however, that this same vessel was out of navigation as a matter of law during a six-month period when it was in drydock in Germany, the trial court erred, for it required the jury not only to ignore the nature of Latsis's service to the vessel during the entire period to which he was assigned to it, but the district court also instructed the jury to treat that service as unrelated to Latsis's status as a member of the S.S. GALILEO's crew. Thus, the jury was instructed to ignore a substantial portion of Latsis's employment-related work aboard and on behalf of the vessel.

In holding this instruction to be legal error, the Court of Appeals for the Second Circuit properly recognized that to determine seaman's status under the Jones Act, a court must assess the individual's employment-related connection to the vessel. To do so, the Second Circuit held that the factfinder must accept not only that the seaman contributed to the function of or helped to accomplish the mission of the vessel, but that (1) the worker's contribution was "limited to a single vessel or group of vessels," and that his contribution was "substantial in terms of its (a) duration or (b) nature," and, finally, that in the course of his employment, he was regularly exposed to the hazards of the sea. *Latsis v. Chandris, Inc.*, 20 F.3d 45, 57 (2nd Cir. 1994). This test comports with the Court's directives concerning seaman's status in *Wilander* and in *Southwest Marine, Inc. v. Gizoni*, 502 U.S. 81 (1991).

The test for seaman's status, as articulated by the Second Circuit in *Latsis*, not only furnishes the jurisprudential means by which lower courts can distinguish between land-based

workers and seamen, but it incorporates and integrates the principles set forth in the Court's *Wilander* decision by directing those courts to assess not only the perils to which a maritime worker is exposed but the duration or nature of the seaman's substantive contribution to the vessel and its mission. Accordingly, the Second Circuit provides a workable method by which the lower courts will be able to distinguish land-based workers, such as longshoremen and harborworkers, from those maritime workers intended to fall within the ambit of the Jones Act's coverage.

ARGUMENT

THE SECOND CIRCUIT'S TEST FOR SEAMAN'S STATUS IN *LATSIS* COMPORTS WITH *WILANDER'S* MANDATE THAT A SEAMAN HAVE A SUBSTANTIAL EMPLOYMENT-RELATED CONNECTION TO A VESSEL OR VESSELS.

The term "seaman" represents a "maritime term of art" that has a long history. *McDermott, Inc. v. Wilander*, 498 U.S. at 342. The initial task before the Court in *Wilander* -- "to determine who was a seaman under the general maritime law when Congress passed the Jones Act -- is again before the Court. *Id.* As the Court acknowledged in *Wilander*, however, ". . . admiralty courts throughout the world had long recognized that seamen's benefits were properly extended to all those who worked on board vessels in furtherance of the myriad purposes for which ships set to sea . . .." *Id.* at 344. No question exists but that Latsis went to sea on the S.S. GALILEO, that he was acknowledged by his employer to be a member of its crew, and that his assignment to that vessel was for the duration of its voyage. Under such circumstances, his employment is readily distinguishable from that of a longshoreman, or other land-based worker, who

CONCLUSION

The decision by the Second Circuit should be affirmed, with this Court's directive that seaman's status be defined in accordance with the legal guidelines articulated by the Court of Appeals for the Second Circuit.

Respectfully submitted,

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